



2025:DHC:5286-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 167/2025 & CM APPL. 38208/2025, CM APPL. 38209/2025, CM APPL. 38210/2025**

VIJAY GUPTAAppellant
Through: Mr. Sandeep Bisht and Mr. Aakash Singh, Advs.

versus

PAWAN KUMAR MITTAL & ORS.Respondents
Through: Mr. S.K. Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)
03.07.2025

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C. HARI SHANKAR, J.

1. We find, from the order passed by the learned District Judge (Commercial Court)-02 Patiala House Courts, New Delhi in CS(Comm) 337/2025, that, perhaps inadvertently, the learned Commercial Court has not discussed, or returned any finding on the aspect of goodwill of the respondent's mark, before granting an injunction on the ground of passing off.

2. The existence of goodwill is the first and most fundamental element for a passing off action to succeed.



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3. On this being pointed out, Mr. Bansal, learned Counsel for the respondents, submits that, without prejudice to his rights and contentions and without treating it as any kind of concession on his part, the impugned order may be set aside and the matter may be remanded to the learned Commercial Court for consideration afresh.
4. Accordingly, with consent, the impugned order is quashed and set aside. We have not examined any other aspect of the matter.
5. The interlocutory application filed by the respondent/plaintiff before the learned Commercial Court under Order XXXIX Rules 1 and 2 of the CPC shall stand remanded for *de novo* consideration to the learned Commercial Court before whom both parties shall appear on 16 July 2025.
6. Neither party shall seek an adjournment. In order to facilitate hearing, both sides are directed to place on record short note of their respective submissions not exceeding four pages each after exchanging copies with each other at least a week in advance of hearing before the learned Commercial Court.
7. We request the learned Commercial Court to take up the matter on the date fixed and not grant any adjournment and to decide the application thereafter as expeditiously as possible.
8. The learned Commercial Court would decide the application afresh without being influenced by any observation contained in the impugned order.



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9. The appeal stands allowed to the aforesaid extent with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 3, 2025

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Click here to check corrigendum, if any